

## HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., § 402 (Aug. 2, 1946, ch. 753, title I, § 140, 60 Stat. 833).

**Editorial Notes**

## AMENDMENTS

1984—Pub. L. 98–497, § 107(a)(10), substituted “National Archives and Records Administration” for “General Services Administration”.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–497 effective Apr. 1, 1985, see section 301 of Pub. L. 98–497, set out as a note under section 2102 of this title.

**§ 2119. Cooperative agreements**

(a) **AUTHORITY.**—The Archivist may enter into cooperative agreements pursuant to section 6305 of title 31 that involve the transfer of funds from the National Archives and Records Administration to State and local governments, other public entities, educational institutions, or private nonprofit organizations (including foundations or institutes organized to support the National Archives and Records Administration or the Presidential archival depositories operated by it) for the public purpose of carrying out programs of the National Archives and Records Administration.

(b) **LIMITATIONS.**—Not more than \$25,000 may be transferred under a cooperative agreement entered into as authorized by subsection (a). Not more than a total of \$75,000 may be transferred under such agreements in any fiscal year.

(c) **REPORT.**—Not later than December 31st of each year, the Archivist shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the provisions, amount, and duration of each cooperative agreement entered into as authorized by subsection (a) during the preceding fiscal year.

(Added Pub. L. 108–383, § 5(a), Oct. 30, 2004, 118 Stat. 2219.)

**Statutory Notes and Related Subsidiaries**

## CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

**§ 2120. Online access of founding fathers documents**

The Archivist may enter into a cooperative agreement to provide online access to the published volumes of the papers of—

- (1) George Washington;

- (2) Alexander Hamilton;
- (3) Thomas Jefferson;
- (4) Benjamin Franklin;
- (5) John Adams;
- (6) James Madison; and

(7) other prominent historical figures, as determined appropriate by the Archivist of the United States.

(Added Pub. L. 110–404, § 4(a), Oct. 13, 2008, 122 Stat. 4283.)

**Statutory Notes and Related Subsidiaries**

## TRANSFER OF FUNDS

Pub. L. 110–404, § 4(b), Oct. 13, 2008, 122 Stat. 4283, provided that:

“(1) **IN GENERAL.**—The Archivist of the United States, in the role as chairman of the National Historical Publications and Records Commission may enter into cooperative agreements pursuant to section 6305 of title 31, United States Code, that involve the transfer of funds from the National Historical Publications and Records Commission to State and local governments, tribal governments, other public entities, educational institutions, or private nonprofit organizations for the public purpose of carrying out section 2120 of title 44, United States Codes [sic].

“(2) **REPORT.**—Not later than December 31st of each year, the Archivist of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives a report on the provisions, amount, and duration of each cooperative agreement entered into as authorized by paragraph (1) during the preceding fiscal year.”

**CHAPTER 22—PRESIDENTIAL RECORDS**

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**Editorial Notes**

## AMENDMENTS

2014—Pub. L. 113–187, § 2(a)(3), (e)(2), Nov. 26, 2014, 128 Stat. 2005, 2007, added items 2208 and 2209.

**§ 2201. Definitions**

As used in this chapter—

(1) The term “documentary material” means all books, correspondence, memoranda, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio and visual records, or other electronic or mechanical recordings, whether in analog, digital, or any other form.

(2) The term “Presidential records” means documentary materials, or any reasonably

<sup>1</sup> So in original. Does not conform to section catchline.

segregable portion thereof, created or received by the President, the President's immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise or assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of the President's staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e)<sup>1</sup> of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term "personal records" means all documentary materials, or any reasonably segregable portion thereof,<sup>2</sup> of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency; and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

(4) The term "Archivist" means the Archivist of the United States.

(5) The term "former President", when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

(Added Pub. L. 95-591, §2(a), Nov. 4, 1978, 92 Stat. 2523; amended Pub. L. 113-187, §§2(b), 8(2), Nov. 26, 2014, 128 Stat. 2005, 2011.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 552(e) of title 5, referred to in par. (2)(B)(i), was redesignated section 552(f) of title 5 by section 1802(b) of Pub. L. 99-570.

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be "thereof."

#### AMENDMENTS

2014—Par. (1). Pub. L. 113-187, §2(b)(1), substituted "memoranda" for "memorandums" and "audio and visual records" for "audio, audiovisual" and inserted " , whether in analog, digital, or any other form" after "mechanical recordings".

Par. (2). Pub. L. 113-187, §8(2), substituted "the President's" for "his" in introductory provisions and in subpar. (A).

Pub. L. 113-187, §2(b)(2), substituted "advise or assist" for "advise and assist" in introductory provisions.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 95-591, §3, Nov. 4, 1978, 92 Stat. 2528, provided that: "The amendments made by this Act [enacting this chapter, amending sections 2111 and 2112 of this title, and enacting provisions set out as notes under this section] shall be effective with respect to any Presidential records (as defined in section 2201(2) of title 44, as amended by section 2 of this Act) created during a term of office of the President beginning on or after January 20, 1981."

##### SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95-591, which enacted this chapter, as the "Presidential Records Act of 1978", see section 1 of Pub. L. 95-591, set out as a note under section 101 of this title.

##### SEPARABILITY

Pub. L. 95-591, §4, Nov. 4, 1978, 92 Stat. 2528, provided that: "If any provision of this Act [enacting this chapter, amending sections 2107 and 2108 of this title and enacting provisions set out as notes under this section] is held invalid for any reason by any court, the validity and legal effect of the remaining provisions shall not be affected thereby."

#### § 2202. Ownership of Presidential records

The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

(Added Pub. L. 95-591, §2(a), Nov. 4, 1978, 92 Stat. 2524.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as a note under section 2201 of this title.

#### § 2203. Management and custody of Presidential records

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of the President's constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are preserved and maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, the President's staff, or units or individuals in the Executive Office of

the President the function of which is to advise or assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During the President's term of office, the President may dispose of those Presidential records of such President that no longer have administrative, historical, informational, or evidentiary value if—

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that the Archivist does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that the Archivist does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Oversight and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever the Archivist considers that—

(1) these particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

(f) During a President's term of office, the Archivist may maintain and preserve Presidential records on behalf of the President, including records in digital or electronic form. The President shall remain exclusively responsible for custody, control, and access to such Presidential records. The Archivist may not disclose any such records, except under direction of the President, until the conclusion of a President's term of office, if a President serves consecutive terms upon the conclusion of the last term, or such other period provided for under section 2204 of this title.

(g)(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this chapter.

(2) The Archivist shall deposit all such Presidential records in a Presidential archival deposi-

tory or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) When the President considers it practicable and in the public interest, the President shall include in the President's budget transmitted to Congress, for each fiscal year in which the term of office of the President will expire, such funds as may be necessary for carrying out the authorities of this subsection.

(4) The Archivist is authorized to dispose of such Presidential records which the Archivist has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

(Added Pub. L. 95-591, §2(a), Nov. 4, 1978, 92 Stat. 2524; amended Pub. L. 104-186, title II, §223(9), Aug. 20, 1996, 110 Stat. 1752; Pub. L. 113-187, §§2(c), 8(3), Nov. 26, 2014, 128 Stat. 2006, 2011; Pub. L. 114-136, §3, Mar. 18, 2016, 130 Stat. 305.)

#### Editorial Notes

##### AMENDMENTS

2016—Subsec. (g)(3), (4). Pub. L. 114-136 added par. (3) and redesignated former par. (3) as (4).

2014—Subsec. (a). Pub. L. 113-187, §8(3)(A), substituted “the President's” for “his”.

Pub. L. 113-187, §2(c)(1), substituted “preserved and maintained” for “maintained”.

Subsec. (b). Pub. L. 113-187, §8(3)(B), substituted “the President's” for “his”.

Pub. L. 113-187, §2(c)(2), substituted “advise or assist” for “advise and assist”.

Subsec. (c). Pub. L. 113-187, §8(3)(C)(i), substituted “the President's” for “his” and “those Presidential records of such President” for “those of his Presidential records” in introductory provisions.

Subsec. (c)(2). Pub. L. 113-187, §8(3)(C)(ii), substituted “the Archivist does” for “he does”.

Subsec. (d). Pub. L. 113-187, §8(3)(D), substituted “the Archivist does” for “he does”.

Subsec. (e). Pub. L. 113-187, §8(3)(E), substituted “the Archivist considers” for “he considers” in introductory provisions.

Subsec. (f). Pub. L. 113-187, §2(c)(4), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 113-187, §2(c)(3), redesignated subsec. (f) as (g).

Subsec. (g)(1). Pub. L. 113-187, §2(c)(5), substituted “this chapter” for “this Act”.

Subsec. (g)(3). Pub. L. 113-187, §8(3)(F), substituted “the Archivist has” for “he has”.

1996—Subsec. (e). Pub. L. 104-186 substituted “House Oversight” for “House Administration”.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on House Oversight of House of Representatives changed to Committee on House Adminis-

tration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

#### EFFECTIVE DATE

Section effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as a note under section 2201 of this title.

#### Executive Documents

##### CLASSIFIED NATIONAL SECURITY INFORMATION

For provisions authorizing Archivist to review, downgrade, and declassify information of former Presidents under control of Archivist pursuant to this section, see Ex. Ord. No. 13526, §3.5(b), Dec. 29, 2009, 75 F.R. 718, set out as a note under section 3161 of Title 50, War and National Defense.

#### § 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of a President's term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relating to appointments to Federal office;

(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) confidential communications requesting or submitting advice, between the President and the President's advisers, or between such advisers; or

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b)(1) Any Presidential record or reasonably segregable portion thereof containing informa-

tion within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

(A)(i) the date on which the former President waives the restriction on disclosure of such record, or

(ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or the President's agents.

(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1);<sup>1</sup> or

(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in the Archivist's discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or the Archivist's designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(c)(1) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, except that paragraph (b)(5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Administration. Access to such records shall be granted on nondiscriminatory terms.

(2) Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President.

<sup>1</sup> So in original. Probably should be “2203(g)(1)”;.

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter, except section 2208, shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

(f) The Archivist shall not make available any original Presidential records to any individual claiming access to any Presidential record as a designated representative under section 2205(3) of this title if that individual has been convicted of a crime relating to the review, retention, removal, or destruction of records of the Archives.

(Added Pub. L. 95-591, §2(a), Nov. 4, 1978, 92 Stat. 2525; amended Pub. L. 98-497, title I, §107(b)(7), Oct. 19, 1984, 98 Stat. 2287; Pub. L. 113-187, §2(a)(2)(A), (d), 8(4), Nov. 26, 2014, 128 Stat. 2005, 2006, 2011.)

### Editorial Notes

#### REFERENCES IN TEXT

This Act, referred to in subsec. (c)(2), probably means Pub. L. 95-591, Nov. 4, 1978, 92 Stat. 2523, known as the Presidential Records Act of 1978, which enacted this chapter, amended sections 2107 and 2108 of this title, and enacted provisions set out as notes under section 2201 of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 101 of this title and Tables.

#### AMENDMENTS

2014—Subsec. (a). Pub. L. 113-187, §8(4)(A)(i), substituted “a President’s” for “his” in introductory provisions.

Subsec. (a)(5). Pub. L. 113-187, §8(4)(A)(ii), substituted “the President’s” for “his”.

Subsec. (b)(1)(B). Pub. L. 113-187, §8(4)(B)(i), substituted “the President’s” for “his”.

Subsec. (b)(3). Pub. L. 113-187, §8(4)(B)(ii), substituted “the Archivist’s discretion” for “his discretion” and “the Archivist’s designee” for “his designee”.

Subsec. (d). Pub. L. 113-187, §2(a)(2)(A), inserted “, except section 2208,” after “chapter”.

Subsec. (f). Pub. L. 113-187, §2(d), added subsec. (f).

1984—Subsec. (c)(1). Pub. L. 98-497 substituted “National Archives and Records Administration” for “National Archives and Records Service of the General Services Administration”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of this title.

#### EFFECTIVE DATE

Section effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as a note under section 2201 of this title.

### Executive Documents

#### EXECUTIVE ORDER NO. 12667

Ex. Ord. No. 12667, Jan. 18, 1989, 54 F.R. 3403, which established policies and procedures governing the asser-

tion of Executive privilege by incumbent and former Presidents in connection with the release of Presidential records by the National Archives and Records Administration pursuant to this chapter, was revoked by Ex. Ord. No. 13233, §13, Nov. 1, 2001, 66 F.R. 56029, formerly set out below.

#### EXECUTIVE ORDER NO. 13233

Ex. Ord. No. 13233, Nov. 1, 2001, 66 F.R. 56025, which related to further implementation of the Presidential Records Act, was revoked by Ex. Ord. No. 13489, §6, Jan. 21, 2009, 74 F.R. 4671, set out below.

#### EX. ORD. NO. 13489. PRESIDENTIAL RECORDS

Ex. Ord. No. 13489, Jan. 21, 2009, 74 F.R. 4669, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish policies and procedures governing the assertion of executive privilege by incumbent and former Presidents in connection with the release of Presidential records by the National Archives and Records Administration (NARA) pursuant to the Presidential Records Act of 1978, it is hereby ordered as follows:

SECTION 1. *Definitions.* For purposes of this order:

(a) “Archivist” refers to the Archivist of the United States or his designee.

(b) “NARA” refers to the National Archives and Records Administration.

(c) “Presidential Records Act” refers to the Presidential Records Act, 44 U.S.C. 2201-2207.

(d) “NARA regulations” refers to the NARA regulations implementing the Presidential Records Act [of 1978], 36 C.F.R. Part 1270.

(e) “Presidential records” refers to those documentary materials maintained by NARA pursuant to the Presidential Records Act, including Vice Presidential records.

(f) “Former President” refers to the former President during whose term or terms of office particular Presidential records were created.

(g) A “substantial question of executive privilege” exists if NARA’s disclosure of Presidential records might impair national security (including the conduct of foreign relations), law enforcement, or the deliberative processes of the executive branch.

(h) A “final court order” is a court order from which no appeal may be taken.

SEC. 2. *Notice of Intent to Disclose Presidential Records.*

(a) When the Archivist provides notice to the incumbent and former Presidents of his intent to disclose Presidential records pursuant to section 1270.46 of the NARA regulations, the Archivist, using any guidelines provided by the incumbent and former Presidents, shall identify any specific materials, the disclosure of which he believes may raise a substantial question of executive privilege. However, nothing in this order is intended to affect the right of the incumbent or former Presidents to invoke executive privilege with respect to materials not identified by the Archivist. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

(b) Upon the passage of 30 days after receipt by the incumbent and former Presidents of a notice of intent to disclose Presidential records, the Archivist may disclose the records covered by the notice, unless during that time period the Archivist has received a claim of executive privilege by the incumbent or former President or the Archivist has been instructed by the incumbent President or his designee to extend the time period for a time certain and with reason for the extension of time provided in the notice. If a shorter period of time is required under the circumstances set forth in section 1270.44 of the NARA regulations, the Archivist shall so indicate in the notice.

**SEC. 3. Claim of Executive Privilege by Incumbent President.** (a) Upon receipt of a notice of intent to disclose Presidential records, the Attorney General (directly or through the Assistant Attorney General for the Office of Legal Counsel) and the Counsel to the President shall review as they deem appropriate the records covered by the notice and consult with each other, the Archivist, and such other executive agencies as they deem appropriate concerning whether invocation of executive privilege is justified.

(b) The Attorney General and the Counsel to the President, in the exercise of their discretion and after appropriate review and consultation under subsection (a) of this section, may jointly determine that invocation of executive privilege is not justified. The Archivist shall be notified promptly of any such determination.

(c) If either the Attorney General or the Counsel to the President believes that the circumstances justify invocation of executive privilege, the issue shall be presented to the President by the Counsel to the President and the Attorney General.

(d) If the President decides to invoke executive privilege, the Counsel to the President shall notify the former President, the Archivist, and the Attorney General in writing of the claim of privilege and the specific Presidential records to which it relates. After receiving such notice, the Archivist shall not disclose the privileged records unless directed to do so by an incumbent President or by a final court order.

**SEC. 4. Claim of Executive Privilege by Former President.** (a) Upon receipt of a claim of executive privilege by a living former President, the Archivist shall consult with the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel), the Counsel to the President, and such other executive agencies as the Archivist deems appropriate concerning the Archivist's determination as to whether to honor the former President's claim of privilege or instead to disclose the Presidential records notwithstanding the claim of privilege. Any determination under section 3 of this order that executive privilege shall not be invoked by the incumbent President shall not prejudice the Archivist's determination with respect to the former President's claim of privilege.

(b) In making the determination referred to in subsection (a) of this section, the Archivist shall abide by any instructions given him by the incumbent President or his designee unless otherwise directed by a final court order. The Archivist shall notify the incumbent and former Presidents of his determination at least 30 days prior to disclosure of the Presidential records, unless a shorter time period is required in the circumstances set forth in section 1270.44 of the NARA regulations. Copies of the notice for the incumbent President shall be delivered to the President (through the Counsel to the President) and the Attorney General (through the Assistant Attorney General for the Office of Legal Counsel). The copy of the notice for the former President shall be delivered to the former President or his designated representative.

**SEC. 5. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**SEC. 6. Revocation.** Executive Order 13233 of November 1, 2001, is revoked.

BARACK OBAMA.

## § 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to sections 2204 and 2208 of this title—

(1) the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for the conduct of current business of the incumbent President's office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former President shall be available to such former President or the former President's designated representative.

(Added Pub. L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2527; amended Pub. L. 98-497, title I, § 107(b)(7), Oct. 19, 1984, 98 Stat. 2287; Pub. L. 113-187, §§ 2(a)(2)(B), 8(5), Nov. 26, 2014, 128 Stat. 2005, 2012.)

### Editorial Notes

#### AMENDMENTS

2014—Pub. L. 113-187, § 2(a)(2)(B)(i), substituted “sections 2204 and 2208 of this title” for “section 2204” in introductory provisions.

Par. (2)(A). Pub. L. 113-187, § 2(a)(2)(B)(ii), substituted “subpoena” for “subpena”.

Par. (2)(B). Pub. L. 113-187, § 8(5)(A), substituted “the incumbent President's” for “his”.

Par. (3). Pub. L. 113-187, § 8(5)(B), substituted “the former President's” for “his”.

1984—Par. (1). Pub. L. 98-497 substituted “National Archives and Records Administration” for “National Archives and Records Service of the General Services Administration”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of this title.

#### EFFECTIVE DATE

Section effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as a note under section 2201 of this title.

## § 2206. Regulations

The Archivist shall promulgate in accordance with section 553 of title 5, United States Code,

regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(f)(3);<sup>1</sup>

(2) provisions for providing notice to the former President when materials to which access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2);

(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; and

(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b)(7) of title 5, United States Code.

(Added Pub. L. 95-591, §2(a), Nov. 4, 1978, 92 Stat. 2527.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 2203(f)(3), referred to in par. (1), was redesignated section 2203(g)(3) of this title by Pub. L. 113-187, §2(c)(3), Nov. 26, 2014, 128 Stat. 2006, and subsequently redesignated section 2203(g)(4) of this title by Pub. L. 114-136, §3(1), Mar. 18, 2016, 130 Stat. 305.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as a note under section 2201 of this title.

#### § 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter, except section 2208, with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

(Added Pub. L. 95-591, §2(a), Nov. 4, 1978, 92 Stat. 2527; amended Pub. L. 113-187, §2(a)(2)(C), Nov. 26, 2014, 128 Stat. 2005.)

#### Editorial Notes

##### AMENDMENTS

2014—Pub. L. 113-187 inserted “, except section 2208,” after “chapter” in second sentence.

<sup>1</sup> See References in Text note below.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as a note under section 2201 of this title.

##### CONSTRUCTION

Pub. L. 113-187, §2(a)(4), Nov. 26, 2014, 128 Stat. 2005, provided that: “Nothing in the amendment made by paragraph (2)(C) [amending this section] shall be construed to—

“(A) affect the requirement of section 2207 of title 44, United States Code, that Vice Presidential records shall be subject to chapter 22 of that title in the same manner as Presidential records; or

“(B) affect any claim of constitutionally based privilege by a President or former President with respect to a Vice Presidential record.”

#### § 2208. Claims of constitutionally based privilege against disclosure

(a)(1) When the Archivist determines under this chapter to make available to the public any Presidential record that has not previously been made available to the public, the Archivist shall—

(A) promptly provide notice of such determination to—

(i) the former President during whose term of office the record was created; and

(ii) the incumbent President; and

(B) make the notice available to the public.

(2) The notice under paragraph (1)—

(A) shall be in writing; and

(B) shall include such information as may be prescribed in regulations issued by the Archivist.

(3)(A) Upon the expiration of the 60-day period (excepting Saturdays, Sundays, and legal public holidays) beginning on the date the Archivist provides notice under paragraph (1)(A), the Archivist shall make available to the public the Presidential record covered by the notice, except any record (or reasonably segregable part of a record) with respect to which the Archivist receives from a former President or the incumbent President notification of a claim of constitutionally based privilege against disclosure under subsection (b).

(B) A former President or the incumbent President may extend the period under subparagraph (A) once for not more than 30 additional days (excepting Saturdays, Sundays, and legal public holidays) by filing with the Archivist a statement that such an extension is necessary to allow an adequate review of the record.

(C) Notwithstanding subparagraphs (A) and (B), if the 60-day period under subparagraph (A), or any extension of that period under subparagraph (B), would otherwise expire during the 6-month period after the incumbent President first takes office, then that 60-day period or extension, respectively, shall expire at the end of that 6-month period.

(b)(1) For purposes of this section, the decision to assert any claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) must be made personally by a former

President or the incumbent President, as applicable.

(2) A former President or the incumbent President shall notify the Archivist, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate of a privilege claim under paragraph (1) on the same day that the claim is asserted under such paragraph.

(c)(1) If a claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) is asserted under subsection (b) by a former President, the Archivist shall consult with the incumbent President, as soon as practicable during the period specified in paragraph (2)(A), to determine whether the incumbent President will uphold the claim asserted by the former President.

(2)(A) Not later than the end of the 30-day period beginning on the date on which the Archivist receives notification from a former President of the assertion of a claim of constitutionally based privilege against disclosure, the Archivist shall provide notice to the former President and the public of the decision of the incumbent President under paragraph (1) regarding the claim.

(B) If the incumbent President upholds the claim of privilege asserted by the former President, the Archivist shall not make the Presidential record (or reasonably segregable part of a record) subject to the claim publicly available unless—

(i) the incumbent President withdraws the decision upholding the claim of privilege asserted by the former President; or

(ii) the Archivist is otherwise directed by a final court order that is not subject to appeal.

(C) If the incumbent President determines not to uphold the claim of privilege asserted by the former President, or fails to make the determination under paragraph (1) before the end of the period specified in subparagraph (A), the Archivist shall release the Presidential record subject to the claim at the end of the 90-day period beginning on the date on which the Archivist received notification of the claim, unless otherwise directed by a court order in an action initiated by the former President under section 2204(e) of this title or by a court order in another action in any Federal court.

(d) The Archivist shall not make publicly available a Presidential record (or reasonably segregable part of a record) that is subject to a privilege claim asserted by the incumbent President unless—

(1) the incumbent President withdraws the privilege claim; or

(2) the Archivist is otherwise directed by a final court order that is not subject to appeal.

(e) The Archivist shall adjust any otherwise applicable time period under this section as necessary to comply with the return date of any congressional subpoena, judicial subpoena, or judicial process.

(Added Pub. L. 113–187, §2(a)(1), Nov. 26, 2014, 128 Stat. 2003.)

### Statutory Notes and Related Subsidiaries

#### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

#### § 2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) IN GENERAL.—The President, the Vice President, or a covered employee may not create or send a Presidential or Vice Presidential record using a non-official electronic message account unless the President, Vice President, or covered employee—

(1) copies an official electronic messaging account of the President, Vice President, or covered employee in the original creation or transmission of the Presidential record or Vice Presidential record; or

(2) forwards a complete copy of the Presidential or Vice Presidential record to an official electronic messaging account of the President, Vice President, or covered employee not later than 20 days after the original creation or transmission of the Presidential or Vice Presidential record.

(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) by a covered employee (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

(c) DEFINITIONS.—In this section:

(1) COVERED EMPLOYEE.—The term “covered employee” means—

(A) the immediate staff of the President;

(B) the immediate staff of the Vice President;

(C) a unit or individual of the Executive Office of the President whose function is to advise and assist the President; and

(D) a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President.

(2) ELECTRONIC MESSAGES.—The term “electronic messages” means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

(3) ELECTRONIC MESSAGING ACCOUNT.—The term “electronic messaging account” means any account that sends electronic messages.

(Added Pub. L. 113–187, §2(e)(1), Nov. 26, 2014, 128 Stat. 2006.)

### CHAPTER 23—NATIONAL ARCHIVES TRUST FUND BOARD

Sec.	
2301.	Establishment of Board; membership.
2302.	Authority of the Board; seal; services; bylaws; rules; regulations; employees.
2303.	Powers and obligations of Board; liability of members. <sup>1</sup>

<sup>1</sup> Section catchline amended by Pub. L. 98–497 without corresponding amendment of analysis.